

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WINDY PAYNE, individually and as
guardian on behalf of D.P., a minor child,

Plaintiff,

v.

PENINSULA SCHOOL DISTRICT, a
municipal corporation; ARTONDALE
ELEMENTARY SCHOOL, a municipal
corporation; JODI COY, in her individual
and official capacity; JAMES
COOLICAN, in his individual and official
capacity; JANE DOES 1-10; and JOHN
DOES 1-10,

Defendant.

CASE NO. 3:05-cv-05780-RBL

ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR A
PROTECTIVE ORDER

THIS MATTER is before the Court on Plaintiff Windy Payne's motion for a protective order. [Dkt. #131]. Plaintiffs argue that deposing Windy Payne would be cumulative because she already gave her complete testimony in her 2006 deposition, and that deposing D.P. would be futile because of his diminished communicative capacity, and would merely cause him trauma and anxiety. The Motion is GRANTED in part and DENIED in part.

1 Defendants deposed Windy Payne for more than six hours on July 21, 2006. [Dkt #30-6].
2 On June 7, 2013, Defendants sent a deposition notice to Windy Payne, reasoning that they want
3 to know of any new information that was not known at the time of her original deposition.
4 Windy Payne seeks a protective order on the grounds that she has already given her complete
5 testimony.

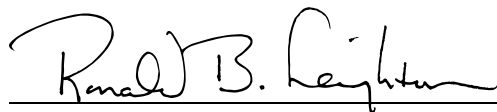
6 Rule 30 requires that a party must obtain leave of the court to take a deposition of
7 someone who has already been deposed in the case. Rule 30(a)(2)(A)(ii). Rule 26 grants courts
8 broad discretion to limit discovery through protective orders “in order to protect a party or
9 person from annoyance, embarrassment, oppression, or undue burden or expense...” Rule 26(c).
10 While it is generally disfavored, multiple depositions are appropriate in certain circumstances,
11 when a long time has passed during which new evidence may have come to light. *Graebner v.*
12 *James River Corp.*, 130 F.R.D. 440, 441 (N.D. Cal. 1989). Because seven years have passed
13 since Windy Payne’s first deposition, and she possesses relevant information about the extent of
14 D.P.’s damages that were not available at the time of her original deposition, the Motion for a
15 protective order as to Windy Payne’s deposition is denied. However, the scope of the deposition
16 will be strictly limited to facts and observations relevant to damages that have occurred since the
17 2006 deposition. The Court will not impose a time restriction unless and until a party alerts the
18 Court of unreasonable or out-of-scope questioning.

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20 Defendants also sent notice of deposition of D.P. Dec. of Vertetis at Ex. 2. Defendants
21 now agree to forego his deposition provided that the Court enter an order prohibiting D.P. from
22 testifying at trial or even appearing in front of the jury. [Dkt #136]. In the interest of protecting
23 D.P. from undue burden and likely trauma and anxiety that would result from this deposition,
24 Plaintiffs’ motion for a protective order as to D.P.’s deposition is granted. Plaintiffs have stated

1 they do not intend to call D.P. as a witness at trial, and a Court order on this matter is
2 unnecessary. [Dkt. #131]. Defendants also request that D.P. be prevented from being present in
3 trial without first having a short meeting with Defendant's counsel so they know how he will
4 present. [Dkt. # 136]. An order on this matter is also unnecessary; Defendants already have
5 knowledge of D.P.'s demeanor and presentation, as Plaintiffs consented to a forensic evaluation
6 of D.P. by Defendant's expert, Dr. Steven Sulzbacher, in April, 2013. [Dkt. #131]. Defendants
7 can consult with their expert regarding D.P.'s presentation and demeanor. The Plaintiffs' Motion
8 for a Protective Order as to D.P.'s deposition IS GRANTED without the Defendant's requested
9 conditions.

10 IT IS SO ORDERED

11 Dated this 3rd day of July, 2013.

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14 RONALD B. LEIGHTON
15 UNITED STATES DISTRICT JUDGE
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